IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
THURSDAY, THE NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE SRI JUSTICE C.V.RAMULU
WRIT PETITION NO : 2794 of 1999

Between:
S. Ramakrishna, s/o S. Koteswara Rao, Ex.Lance Naik Central Industrial Security Force, 6th Reserve Battalion, Arakkonam, R/o Vijayawada, Krishna District.

..... PETITIONER

AND

1. The Union of India, rep.by the Secretary to Government of India, Ministry of Home Affairs, New Delhi.
2. The Deputy Inspector General, Central Industrial Security Force (SZ), Raajaji Bhavan, 'D' Block, Basant Nagar, Chennai-90.
3. The Commandant, Central Industrial Security Force, 6th Reserve Batallion, Arakkonam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or direction more particularly one in the nature of Writ of Certiorari (i) to call for all the relevant and connected records in respect of the order in Proceedings No.V-11014/1/96A6(SZ)/8-32, dated 10.10.1996 of the 2nd respondent confirming the final order in proceedings No.V-15014/Maj/6RB/95/10133, dated 10.10.1995 of the 3rd respondent and quash or set aside the same holding it as arbitrary, illegal, unjust and violative of Articles 14, 16 and 21 of the Constitution of India, (ii) direct the respondent to reinstate the petitioner together with all consequential benefits that flow out of the setting aside of the order dated 10.10.1996 of the 3rd respondent.

Counsel for the Petitioner: MR.SIVA

Counsel for the Respondents: SMT. E.URMILA

The Court made the following :

ORAL ORDER:

The petitioner was appointed as a Constable in the Central Industrial Security Force (CISF) with effect from 9th December, 1981. He asserted that he discharged the duties assigned to him from time to time to the utmost satisfaction of his superiors. He did not give any scope for any complaint either by his superiors or by his colleagues touching upon his efficiency or integrity. He maintained fairly a decent and unblemished record of service all through. While so, he applied for leave due to some domestic problems on 28.05.1994 and sanction was accorded permitting him to avail leave of 30 days from 30th May 1994 to 28th June, 1994. As ill luck would have it, he could not join duty owing to his

ill health. Therefore he sought for extension of leave from time to time on medical grounds. In support of his case he had produced medical certificate issued by the Civil Assistant Surgeon, University General Hospital, Vijayawada. The absence from duty was attributable purely due to his ill health and not on his own volition. He rendered, in all 13 ½ years of unblemished service.

Due to his over stayal of leave a disciplinary action was initiated against him and ultimately he was removed from service by an order dated 10.10.1995. Aggrieved by the same he had filed an appeal before the second respondent. The second respondent by an order dated 20th February, 1996 found that there was procedural flaw in the disciplinary

proceedings and principles of natural justice not adhered to, therefore the proceedings of the disciplinary authority were set aside and the disciplinary authority was directed to draw up de-novo proceedings from the stage of appointment of Enquiry Officer. Further the petitioner was directed to be reinstated into service and he was directed to report to CISF, 6th Reserve Battalion, Arakkonam, for duty within 15 days from the date of receipt of the order and in case he does not report for duty within stipulated period it will be presumed that he is not interested in serving in the Force and the orders to this effect will be issued accordingly. Further it was also observed that the intervening period i.e., from the date of removal from service to the date of re-joining duty on re-instatement will be regularized by the Disciplinary Authority as per rules only after finalizing the de-novo proceedings.

Though the said proceedings were received by the petitioner, he did not join duty as required under the proceedings dated 20th February, 1996 of the second respondent. Whereas, the petitioner sought extension of time for joining duty since he was undergoing medical treatment at Government Hospital, Vijayawada and the Medical Officer advised him to continue the treatment up to 19.03.1996. He was given 7 days time to join duty vide order dated 30.04.1996. He submitted another representation dated 10.5.1996 stating that he has been advised three months bed rest from 21.03.1996. His request was accepted and he was directed to report to the 6th Reserve Battalion before 5th July, 1996 vide order dated 30.05.1996. Again the petitioner requested to extend the time upto 21.08.1996 which was also accepted and directed him to report for duty by 31.08.1996 vide orders dated 15.07.1996. Again the petitioner applied for one month extension of time from 01.09.1996 vide his application dated 30.08.1996. This request for extension of time was not granted and the petitioner was

advised to report for duty on or before 30.09.1996 with a clear direction that if he fails to do so, the re-instatement order dated 20.02.1996 will be made inoperative automatically, vide orders dated 10.09.1996. In spite of granting extensions for four times up to 30.09.1996, the petitioner has sent another application dated 23.09.1996 enclosing a private doctor's certificate stating that he was being treated for fracture on right leg and he was advised 40 days bed rest from 23.09.1996. In this back ground the appellate authority felt that the orders issued removing the petitioner from service were liable to be restored and the orders of reinstatement are liable to be withdrawn, since the petitioner has no interest to join duty and he is making dilatory tactics. Therefore, he cancelled the orders dated 20.02.1996 and ordered the restoration of orders dated 10.10.1995 passed by the disciplinary authority.

Aggrieved by the same the present writ petition is filed.

Learned counsel for the petitioner contends that the appellate authority having granted extensions for four times and also directing the disciplinary authority to conduct a de-novo enquiry into the matter ought not to have taken up the matter on its own and that could have formed the part of de-novo enquiry to be conducted by the authority or that could have been enquired as a separate misconduct.

It is true that the petitioner was granted extensions for four times and finally though he was warned that if he does not join duty within stipulated period, the orders of removal shall be restored, he did not care for the same. However, learned counsel for the petitioner submits that once extensions for four times were granted, the orders of dismissal dated 20.02.1996 could not have been restored automatically, at the most an enquiry could have been conducted into this misconduct also.

It is curious to note that the very order dated 20.02.1996 was passed by the appellate authority stating that there was a procedural flaw and gross violation of principles of natural justice since an *ex parte*

enquiry was conducted without a notice being served on the petitioner. Having said so, the appellate authority directed to conduct de-novo enquiry and the petitioner was directed to be reinstated in the meanwhile. However, the petitioner could not join duty in spite of granting extensions for four times and the petitioner has explained the circumstances under which he could not join duty and he also stated that he suffered fracture to his leg and he was undergoing treatment. Therefore, he asked time to join duty. The impugned proceedings were issued by the appellate authority on 10.10.1996, under which the petitioner was not allowed to join duty.

I am in complete agreement with the submissions made by learned counsel for the petitioner that the petitioner could have been allowed to join duty and the subsequent misconduct of non-joining duty also could have been formed as part of the charge in the de-novo enquiry contemplated under the proceedings dated 10.10.1995. The appellate authority himself taking up the matter and stating that since the petitioner has not joined duty in time, in spite of granting extensions for four times, his services are liable to be terminated as contemplated under proceedings dated 10.10.1995, is unreasonable. Further, in the counter they have not denied the assertion that services rendered by the petitioner for 13 ½ years was unblemished one.

On the other hand learned counsel for the petitioner submits that the petitioner had put in good record of service and he was also recipient of some awards.

In the above circumstances, I am of the considered opinion that the order passed by the appellate authority dated 10.10.1996 is liable to be set aside and the order dated 20.02.1996 passed by the appellate authority at the first instance shall be restored and the petitioner be permitted to join duty, leaving it open to the disciplinary authority to conduct de-novo enquiry as directed by the second respondent in his

proceedings dated 20.02.1996 including the present misconduct purported to have been committed by the petitioner i.e., failing to report for duty, in spite of granting extensions for four times, after the proceedings issued by the second respondent dated 20.02.1996.

Hence, the order passed by the appellate authority dated 10.10.1996 is hereby set aside and the order dated 20.02.1996 passed by the appellate authority at the first instance is restored. The petitioner is permitted to join duty, leaving it open to the disciplinary authority to conduct the de-novo enquiry as directed by the second respondent in his proceedings dated 20.02.1996 including the misconduct purported to have been committed by the petitioner i.e., failing to report for duty in spite of granting extensions for four times even after the proceedings issued by the second respondent dated 20.02.1996.

The Writ Petition is disposed of with the above observations. No costs.

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09.09.2004

Nsr

To

1.The Secretary to the Union of India, Ministry of Home Affairs, New Delhi.

2.The Deputy Inspector General, Central Industrial Security Force (SZ), Rajaji Bhavan, 'D' Block, Basant Nagar, Chennai-90.

3.The Commandant, Central Industrial Security Force, 6th Reserve Batallion, Arakkonam.

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